

UNITED STATE DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ERIC C. MARTIN,

*Plaintiff,*

v.

Case No.

THE TOWN OF TONAWANDA POLICE  
DEPARTMENT o/b/o THE TOWN OF  
TONAWANDA,  
SPEEDWAY, LLC,  
MARK MUSCOREIL, and  
BRIAN VALINT,

*Defendants.*

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**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1331, 1441, 1443, and 1446, and without waiving any rights, privileges or defenses, Defendants, Mark Muscoreil and Brian Valint (“Defendants”), hereby remove the action entitled *Eric C. Martin v. The Town of Tonawanda Police Department o/b/o The Town of Tonawanda, Speedway, LLC, Mark Muscoreil and Brian Valint*, Index Number 808523/2021, filed in the Supreme Court of New York, Erie County, to the United States District Court, Western District of New York (the “Action”), based on the following grounds:

**STATE COURT ACTION**

1. On September 30, 2020, Plaintiff served a Notice of Claim. This document asserted claims against Town of Tonawanda Police Department, on behalf of the Town of Tonawanda, New York. A true and accurate copy of this document is attached as **Exhibit A.**

2. On October 22, 2020, Plaintiff served an Amended Notice of Claim. This document again asserted claims against Town of Tonawanda Police Department, on behalf of the Town of Tonawanda, New York. A true and accurate copy of this document is attached as **Exhibit B**.

3. On June 29, 2021, Plaintiff commenced the Action in the Supreme Court of New York, Erie County, with the filing of a Summons and Complaint (“2021 Summons and Complaint”). A true and accurate copy of this document is attached as **Exhibit C**.

4. The 2021 Summons and Complaint listed Town of Tonawanda Police Department o/b/o the Town of Tonawanda, Speedway, LLC, Marathon Petroleum Corporation, and John Doe #1, 2, 3, 4, 5, 6, 7, 8, as Defendants. This document alleged eight causes of action, including: deprivation of Plaintiff’s Fourth and Fourteenth Amendments under 42 U.S.C. § 1983 by John Does #1 through #5; violation of Plaintiff’s Fourth, Fifth, and Fourteenth Amendments under 42 U.S.C. § 1983 by John Does #1 through #5; and violation of fundamental rights afforded to all Americans under the United States and New York Constitutions by John Does #6 through #8.

5. On April 14, 2023, Plaintiff filed an Amended Complaint (“2023 Complaint”). A true and accurate copy of this document is attached as **Exhibit D**.

6. The 2023 Complaint lists Town of Tonawanda Police Department o/b/o the Town of Tonawanda, Speedway, LLC, Mark Muscoreil, and Brian Valint, as Defendants. This document alleged eight causes of action, including: deprivation of Plaintiff’s Fourth and Fourteenth Amendments under 42 U.S.C. § 1983 by Mark Muscoreil and Brian Valint; violation of Plaintiff’s Fourth, Fifth, and Fourteenth Amendments under 42 U.S.C. § 1983

by Mark Muscoreil and Brian Valint; and violation of fundamental rights afforded to all Americans under the United States and New York Constitutions by Mark Muscoreil and Brian Valint.

7. The 2023 Complaint is the first time Defendants Mark Muscoreil and Brian Valint have had claims filed against them in this matter. The claims referenced in paragraph 6, above, involve questions of federal law, including civil rights violations. Pursuant to 28 U.S.C. §§ 1331, 1443, this matter is proper for removal to federal court.

8. Pursuant to 28 U.S.C. § 1446(b)(1), this removal is timely.

#### **PROCEDURAL REQUIREMENTS**

9. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings and orders served in this action are attached to this Notice of Removal. See Exs. 1 through 61.

10. Pursuant to 28 U.S.C. § 1446(d), Defendants will serve a copy of this Notice of Removal on Plaintiff and Co-Defendant and will file a copy of this Notice of Removal with the clerk of the State court.

11. Pursuant to Local Rule 81(a)(1) and (2), Defendants have submitted a civil cover sheet with this Notice of Removal and have paid the requisite filing fee.

12. Pursuant to Local Rule 81(a)(3), Defendants are attaching an Index of Exhibits identifying each document filed and/or served in the state court matter.

13. Pursuant to Local Rule 81(a)(4), the undersigned hereby certifies that he has provided all other parties in this action with the Notice of Removal and exhibits being filed in this Court.

14. By filing this Notice of Removal, Defendants do not waive any defense that may be available to them.

15. Defendants reserve the right to amend or supplement this Notice of Removal.

WHEREFORE, pursuant to 28 U.S.C. § 1331, 1441, 1443, and 1446, Defendants hereby remove this action from the Supreme Court of New York, Erie County, to the United States District Court, Western District of New York.

DATED: May 11, 2023

By: /s/ Marc Smith

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*Attorneys for The Town of Tonawanda  
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Tonawanda, Mark Muscoreil and Brian  
Valint*

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that on May 11, 2023, a copy of this Notice of Removal with the Index of Exhibits, was served on the following counsel of record via electronic mail and United States Mail, first class postage prepaid:

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s/ Marc S. Smith